



**U.S. Department of Justice**

***Michael J. Sullivan***  
***United States Attorney***  
***District of Massachusetts***

*Main Reception: (617) 748-3100*

*John Joseph Moakley United States Courthouse  
1 Courthouse Way  
Suite 9200  
Boston, Massachusetts 02210*

August 24, 2006

Brien T. O'Connor  
Ropes & Gray  
One International Place  
Boston, MA 02110

**Re: Side Letter Agreement with Schering-Plough Corporation**

Dear Mr. O'Connor:

This letter ("Side Letter Agreement") will confirm that, in exchange for full performance of the Plea Agreement entered into by and among the United States of America, acting through the United States Attorney for the District of Massachusetts ("U.S. Attorney") and the Department of Justice (collectively referred to as "the United States") and your client, Schering Sales Corporation ("Schering Sales"), a copy of which plea agreement is attached hereto as Exhibit One, and in exchange for certain other promises made herein between and among the United States and your client, Schering-Plough Corporation ("Schering-Plough;" collectively, Schering-Plough Corporation and Schering Sales Corporation will be referred to as "Schering"), the United States and Schering-Plough Corporation hereby agree as follows:

a. No Criminal Prosecution of Schering-Plough Corporation

The United States hereby declines prosecution of Schering-Plough Corporation for conduct by or attributable to Schering-Plough Corporation that:

- (1) falls within the scope of the Information to which Schering Sales is pleading guilty;
- (2) was a subject of the grand jury investigation by the U.S. Attorney in Massachusetts including allegations that Schering:
  - (a) failed to report to HCFA the price at which it sold products to health maintenance organizations pursuant to private label, repackaging or relabeling agreements as the best price for those products;

- (b) directly or indirectly offered or paid remuneration, such as drug samples, clinical trial grants and other items or services of value, and marketed vial overfill to customers including but not limited to physicians, physician practice groups, patient care groups, pharmacy benefit managers, HMOs, hospitals, buying groups, wholesalers and/or distributors (and individuals operating by or on behalf of those entities) to induce these entities or individuals to recommend, prescribe and/or purchase Schering's oncology and hepatitis drugs;
  - (c) paid remuneration to managed care entities to obtain and keep the Claritin family of drugs and other drug business, including by the provision of nominally priced goods to managed care entities to evade best price reporting requirements regarding the Claritin family of drugs;
  - (d) promoted, marketed and sold oncology and hepatitis drugs in violation of the Food, Drug & Cosmetic Act;
  - (e) failed to disclose clinical data concerning Schering's oncology and hepatitis drug products;
  - (f) destroyed documents and engaged in other allegedly obstructive conduct; and
  - (g) engaged in bundling and the unlawful manipulation of drug pricing to evade Medicaid rebate liability or to improperly inflate drug reimbursements; or.
- (3) was known to the U.S. Attorney in Massachusetts prior to the date of execution of this letter in connection with the sales, marketing, pricing and promotion of Schering's drugs prior to July 1, 2005.

The United States does not decline criminal prosecution of Schering-Plough Corporation or any of Schering's related entities for any other conduct beyond that set forth above.

This Side Letter Agreement is not intended to and does not affect the criminal liability of any individual.

It is understood among the parties to this Side Letter Agreement that the United States' promise not to prosecute Schering-Plough Corporation is dependent upon and subject to Schering Sales Corporation fulfilling its material obligations in the Plea Agreement and the related Civil Settlement Agreement attached hereto as Exhibit Two. If Schering does not fulfill its material obligations in the Plea Agreement and the related Civil Settlement Agreement, Schering-Plough Corporation agrees to waive any defenses regarding pre-indictment delay, statute of limitations, or Speedy Trial Act with respect to any and all criminal charges that could have been timely brought

or pursued as of August 17, 2006.

b. Cooperation of Schering-Plough Corporation

Schering shall cooperate completely and truthfully in any trial or other proceeding arising out of any ongoing federal grand jury investigation of its current and former officers, agents, and employees. Schering shall make reasonable efforts to facilitate access to, and to encourage the cooperation of, its current and former officers, agents, and employees for interviews sought by law enforcement agents, upon request and reasonable notice. Schering shall also take reasonable measures to encourage its current and former officers, agents, and employees to testify truthfully and completely before any grand jury, and at any trial or other hearing, at which they are requested to do so by any government entity.

In addition, Schering shall furnish to law enforcement agents, upon request, all documents and records in its possession, custody or control relating to the conduct that is within the scope of any ongoing grand jury investigation, trial or other criminal proceeding in the District of Massachusetts, and that are not covered by the attorney-client privilege or work product doctrine.

Provided, however, notwithstanding any provision of this Agreement, that: (1) Schering is not required to request of its current or former officers, agents, or employees that they forego seeking the advice of an attorney nor that they act contrary to that advice; (2) Schering is not required to take any action against its officers, agents, or employees for following their attorney's advice; and (3) Schering is not required to waive any privilege or claim of work product protection except to the extent set forth in the succeeding paragraph.

Schering specifically agrees to waive any attorney-client privilege regarding the decision to provide nominally priced Claritin Reditabs to the HMO referenced in the Information in 2000, and to terminate that arrangement in 2001.

Schering-Plough Corporation acknowledges that Schering Sales Corporation expressly and unequivocally admits that it knowingly, intentionally and willfully committed the crime charged in the Information and is in fact guilty of that offense. Schering-Plough Corporation agrees that it will not make statements inconsistent with this explicit admission of guilt by Schering Sales Corporation to the crime charged in the Information.

c. Who Is Bound By Agreement

This letter agreement is binding upon the Attorney General of the United States, the United States Department of Justice, including all United States Attorneys, except that this agreement does not bind the Tax Division of the United States Department of Justice or the Internal Revenue Service of the United States Department of the Treasury.

It is expressly understood that this Side Letter Agreement will have no effect on state or local

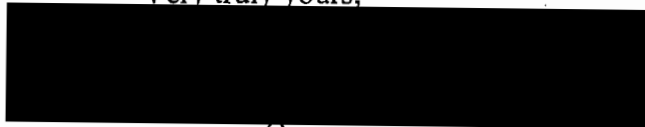
prosecuting authorities, except as set forth in the settlement agreements between Schering-Plough Corporation and the various states.

d. Complete Agreement

This Side Letter Agreement, the Plea Agreement with Schering Sales, the Civil Settlement Agreement, and the Corporate Integrity Agreement, are the complete and only agreements between the parties. No promises, agreements or conditions have been entered into other than those set forth or referred to in the above-identified documents. This agreement supersedes prior understandings, if any, of the parties, whether written or oral. This agreement cannot be modified other than in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement entered into between the United States and Schering-Plough Corporation and its Board of Directors has authorized you to enter into this agreement, please sign below and return the original of this letter to Assistant U.S. Attorney Susan G. Winkler.

Very truly yours,



MICHAEL J. SULLIVAN  
United States Attorney  
District of Massachusetts




SUSAN WINKLER  
Assistant U.S. Attorney  
District of Massachusetts

**ACKNOWLEDGMENT OF AGREEMENT**

The Board of Directors of Schering-Plough Corporation has authorized me to execute this Side Letter Agreement and the Civil Settlement Agreement on behalf of Schering-Plough Corporation. The Board of Directors has been advised of the contents of this Side Letter Agreement, the Civil Settlement Agreement, the Plea Agreement with Schering Sales Corporation, the criminal Information charging Schering Sales Corporation, and the Corporate Integrity Agreement, and has discussed them fully with me. I am further authorized to acknowledge on behalf of Schering-Plough Corporation that these documents fully set forth the agreements made between Schering-Plough Corporation and the United States, and that no additional promises or representations have been made to Schering-Plough Corporation by any officials of the United States in connection with the disposition of this matter, other than those set forth in those documents.

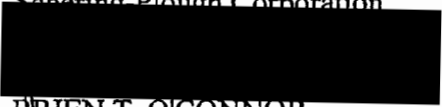
Dated:

8/25/06

  
THOMAS J. SABATINO  
Executive Vice President and General Counsel  
Schering-Plough Corporation

Dated:

8/25/06

  
BRIAN T. O'CONNOR  
Ropes & Gray  
Counsel for Schering-Plough Corporation